

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT WARD GARRISON,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. C05-5837 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING
MOTION TO DISMISS

This civil rights action comes before the Court on the Report and Recommendation of the Magistrate Judge that Defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss be denied.

Plaintiff seeks an injunction directing the Washington State Department of Corrections (DOC) and its sibling institutions, including the Washington Corrections Center (WCC), to cease its "approved vendor only purchase of publications." Plaintiff also complains of being placed in an unsanitary cell and seeks an injunction directing the DOC clean all IMU, segregation, and psychiatric units prior to transferring prisoners.

Defendants DOC and WCC raise a number of objections to the Report and Recommendation that their motion to dismiss be denied. Defendants initially assert that Plaintiff has failed to state a claim under 42 U.S.C. § 1983. Defendants contend that the DOC and WCC are not persons under the statute and therefore, enjoy Eleventh Amendment immunity from suit for damages. Plaintiff however, seeks injunctive relief against the state entities and therefore, the Eleventh Amendment does not apply. Armstrong v. Wilson, 124 F.3d 1019, 1026 (9th Cir. 1997).


Alternatively, Defendants assert that Plaintiff lacks standing to seek injunctive relief because

1 he pleads only past damages and not a likelihood of reoccurrence. The Court's review of a motion
2 to dismiss brought under Fed. R. Civ. P. 12(b)(6) is limited to the complaint. All material allegations
3 contained in the complaint are taken as admitted and the complaint is to be liberally construed in the
4 light most favorable to the plaintiff. Lee v. City of Los Angeles, 250 F.3d 668,688 (9th Cir. 2001).
5 A complaint should not be dismissed under Fed. R. Civ. P. 12(b)(6) unless it appears beyond doubt
6 that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.
7 Doe v. U.S., 419 F.3d 1058, 1062 (9th Cir. 2005). Viewing the allegations in the complaint in the
8 light most favorable to Plaintiff, the Court concludes, as did the Magistrate Judge, that Plaintiff has
9 sufficiently plead an on-going injury to sustain a claim for injunctive relief against the DOC and
10 WCC.

11 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L.
12 Strombom, Objections to the Report and Recommendation, and the remaining record, does hereby
13 find and ORDER:

- 14 (1) The Court adopts the Report and Recommendation;
15 (2) Defendants' motion to dismiss (Dkt. # 64) is DENIED;
16 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
17 and to the Hon. Karen L. Strombom.

18 DATED this 26th day of June, 2007.

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FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE